Iowa Department of Inspections and Appeals
Assisted Living Program
AMENDED - Complaint Investigation Report

Assisted Living Program: **Complaint Intake #:12171**

Victoria Huffman, Administrator
Emerson Point
1335 Shannon Drive
Iowa City, IA 52246

Date of Investigation:

April 5, 2005

Monitor(s):

Stephanie Cummins, SW, MA

Definitions:

The following definitions are relevant:

Regulatory Insufficiency - A violation of a statutory or rule provision within the Iowa Code or Iowa Administrative Code (IAC) governing assisted living programs. A regulatory insufficiency requires a plan of correction to be presented to, and approved by, the Department of Inspections and Appeals (DIA).

Plan of Correction - A written response to one or more regulatory insufficiencies that are rule violations [321 IAC 26.2(5)(a)]. The plan should identify how, and by a specific date, an insufficiency will be corrected. The plan is due to DIA within ten (10) working days of the program's receipt of a Complaint Investigation Report. Depending on the circumstances, DIA may re-visit the assisted living program to confirm progress in fulfilling a plan's corrective measures.

Dementia-specific assisted living program - An assisted living program certified under 321 IAC - chapter 25 that either serves five or more tenants with dementia or cognitive disorder staged between 4 and 7 on the Global Deterioration Scale or holds itself out as providing special care for persons with cognitive disorder or dementia, such as Alzheimer's disease, in a dedicated setting.

Overview:

A complaint investigation on-site visit was conducted at Emerson Point on April 5, 2005. In preparing this report, the following information was considered:

Current Program Census:

General Population Program (GPP) – A program that is not a Dementia Specific program, but may have tenants with cognitive disorder.

Current number of tenants without cognitive disorder:	46
Current number of tenants with cognitive disorder:	9
Total Population:	55

Dementia Specific Program (DSP) – Not applicable.

Accreditation Status – Not applicable.

Complaint History – There were no substantiated complaints this certification period.

Complaint Investigation – The complaint investigator(s) made the observations detailed in the following areas.

A. Evaluation of Tenant - The program evaluates each tenant's functional and cognitive abilities and health status and the determination of needed services as required. [321 IAC 25.23(1) and/or (2)]

Monitoring Observation: In the course of the complaint investigation the following information was obtained. Tenant #1 was hospitalized on 4-2-05 due to an allergic reaction to an antibiotic used to treat the tenant's bronchitis. Tenant was discharged on 4-8-05. The RN went to the hospital on 4-7-05 to assess the tenant prior to the tenant's return to the program. The RN spoke with the tenant and the discharge planner and reviewed physician notes, medications, ambulation status, toileting ability and transfer needs. The tenant reportedly recognized the RN and the RN did not see any decline cognitively. Upon the tenant's return to the program on 4-8-05 the RN completed functional, cognitive and health assessments.

- In response to the preliminary identification of Tenant #1 not having been appropriately evaluated by the program, the program provided input, subsequent to the on-site, that the tenant was in fact evaluated by the RN prior to the tenant returning to the program from the hospital.

B. Program Initiated Involuntary Transfer – Program initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by DIA. [321 IAC 25.26(1)]

Complaint Allegation: It was alleged the program had initiated transfer of a tenant without following appropriate protocol.

- Monitoring Observation: Tenant #1 was admitted on 9-28-03. The tenant had a diagnosis of acute bronchitis, type II or unspecified type Diabetes Mellitus, urinary incontinence, asthma, and hypothyroidism. The tenant had a General Power of Attorney (POA) and documentation of this was in the tenant's file. The POA signed the transfer criteria and occupancy agreement both of which are dated 9-26-03. Records indicate one of the transfer criteria is staff supervision of total care for unmanageable incontinence on a routine basis to keep the tenant clean and dry. The document defined unmanageable incontinence to include requiring assistance and/or reminders more than four times per day and/or persistent odor due to incontinence.

  Records indicate in January of 2004, the program started garbage removal five times a week to deal with incontinence odor. In January of 2004, the program began providing pericare in the evenings and cueing Tenant #1 to use the bathroom and to change depends. Records indicate the tenant refused pericare and to change clothes and was given a transfer risk agreement in August of 2004. The transfer risk agreement set forth four goals: change clothing daily, be free of any urine odor, accept assistance with pericare, change depends four times per day and allow staff to remove soiled clothing from the apartment on a daily basis. The goals had to be achieved by 8-23-04 and if not the tenant would be transferred by 9-21-04. The agreement was signed by the tenant and the RN on 8-16-04 and signed by the former Administrator on 8-19-04. The former Administrator is a representative of the

program's limited partnership and is still involved with the program. According to a family interview and administrative staff interviews the tenant's family was notified of the transfer risk agreement. According to the administrative staff interviews the tenant was compliant with this agreement and the odor problem was less apparent and less frequent from August 2004 until late December/early January of 2005.

The most current service plan, which was signed by the tenant, identified several areas that were program interventions to manage the tenant's incontinence. These areas included: toileting assistance, laundry, housekeeping and grooming assistance. According to the RN, despite the interventions, odor due to urinary incontinence had become apparent and frequent in January of 2005. The RN obtained incontinence trial products including a special wash and barrier product. In late January the former Administrator spoke with one of the tenant's family members, the secondary Power of Attorney, during the family members visit. According to a phone interview with the former Administrator this family member was not on the medical release but was the POA in absence of the primary POA and had similar involvement compared to the primary POA. A written statement by the former Administrator indicates the family member asked questions regarding the tenant's level of care. The former Administrator and the family member discussed the incontinence issue and the tenant's refusal to participate. Records indicate the date was near the tenant's birthday on 2-3-05. The tenant saw the tenant's physician and began taking samples of Sanctura on 2-10-05 and the RN requested a prescription five days later. The program also began extra mopping of the floor and suggested to the family that there be professional cleaning of the couch in the tenant's apartment.

The former Administrator contacted the POA on 2-23-05 and discussed the tenant's incontinence and that it was no longer manageable. According to records this was evident because the program assisted four times a day with pericare and odor was still a problem. They also discussed the tenant's refusal to participate in managing the incontinence. The program recommended the tenant see an urologist. According to program records the conversation entailed a plan with a working solution by the end of March or the tenant would need to transfer. The POA set up an appointment for the tenant to see an urologist and the appointment was set for 3-31-05, which was the next available appointment. On approximately 2-23-05 or 2-24-05 the POA contacted the program and asked what the timeline would be for transfer. The POA was told that the program would give two weeks from the date of the appointment if they felt the doctor had a plan that would address the incontinence issue. According to a written statement by the former Administrator if the doctor did not have a plan or felt everything had been done then 4-15-05 would be the transfer deadline. According to this statement if there was a plan the program would give it two more weeks extending the deadline for transfer to the end of April (April 30, 2005).

On 3-29-05 the tenant received a 30-day notice of transfer letter due to unmanageable incontinence. The letter stated the tenant had the right to appeal the transfer notice and included the telephone number for the program and the State Ombudsman Office. The date of the letter was 3-29-05 and the transfer date was 4-30-05. According to the former Administrator the letter of transfer was given at this time in order for the program to give formal written notice since the discussions had been informal up to this point, in order for the program to reiterate the latest deadline (April 30, 2005) and

because the program felt they could manage the tenant's needs for 30 days more so a need for an earlier transfer was not needed.
On 3-31-05 the tenant saw the urologist and instructions were to stop Sanctura, and to start voiding every two hours and double voiding to make sure the bladder was completely empty, and to start taking Metamucil BID. The program also programmed Lifeline reminders for the tenant to use the toilet in between the pericare four times per day to ensure a two-hour toileting schedule. The POA also called the tenant daily or every other day to remind the tenant to use the toilet.

The program held a hearing with the POA on 4-1-05 regarding the appeal to the transfer notice. On 4-4-05 the program proposed an agreement that set forth goals for the tenant and stated if the goals were not met with 100% compliance the tenant would receive a notice for permanent transfer on 4-15-05 with an expected transfer date of no later than 5-15-05. The goals included: changing depends more often than the four times a day when staff assist, wearing depends correctly, respond to all Lifeline reminders, comply with doctor's orders, toilet every two hours and double void, flush the toilet and take Metamucil daily. The POA, the RN, Administrator, and the former Administrator signed the agreement on 4-5-05 the day of the complaint investigation.

The tenant was hospitalized on 4-2-05 due to an allergic reaction to an antibiotic used to treat the tenant's bronchitis. Tenant was discharged on 4-8-05. The RN went to the hospital on 4-7-05 to assess the tenant prior to the tenant's return to the program. The RN spoke with the tenant and the discharge planner and reviewed physician notes, medications, ambulation status, toileting ability and transfer needs. The tenant reportedly recognized the RN and the RN did not see any decline cognitively.

On 4-8-05 the tenant was discharged from the hospital and returned to Emerson Point. A functional, cognitive, and health assessment were completed on 4-8-05 by the RN. The cognitive portion of the evaluation stated the tenant required prompting only under stressful or unfamiliar situations, was confused in new or complex situations only, was not reported or observed to be anxious and had a depressed mood. According to the assessment, the tenant was not observed or reported to have memory deficit, impaired decision making, failure to perform usual activities of daily living (ADL's) or instrumental activities of daily living (IADL's), did not have verbally or physically aggressive behaviors or disruptive, socially inappropriate or delusional behaviors. Direct care staff indicated in an interview that the tenant was not confused but just chose not to participate in toileting. The nurse's note on the assessment dated 4-8-05 stated Lifeline was set up to provide five reminders a day to use the toilet and pericare and change of depends occurred four times a day by program staff. It indicated staff would empty the garbage can daily and note how many depends were in the garbage can. Nurse's notes on the assessment indicated the tenant verbalized understanding of transfer letter/agreement (4-4-05) with specific goals regarding incontinence.

Additional assessments were completed on 4-12-05 and 4-15-05 due to a change in services. The assessment dated 4-12-05 stated RN talked with tenant about transfer notice again and had tenant reread notice and reviewed with tenant. According to the note the tenant did not make eye contact with RN and seemed more interested in watching TV. The assessment dated 4-15-05 stated tenant did not respond to the

Lifeline reminders four times in the past three days. Staff found no more than four soiled depends in the garbage can in the last two days. It was also noted that four times it was marked that the toilet was not flushed in the past three days. While the RN-2 (not regular RN) was completing the assessment the Lifeline reminder went off and tenant ignored it. The RN-2 stated the tenant needed to listen to the reminder and the tenant pushed the button and stated the tenant did not need to go. The RN-2 then instructed tenant to go and void and to change depends. The tenant left and went into the bathroom. The RN-2 waited for the tenant to return and asked if the tenant changed depends and flushed the toilet and the tenant replied yes. The RN-2 observed the toilet was not flushed and no new depends were in the waste container.

According to program records a representative from the nursing facility saw the tenant on 4-12-05. On 4-13-05 the RN spoke with the POA to give an update. The RN stated the nursing facility was there to see the tenant the day before and the POA stated she had not heard from the nursing facility. The RN suggested the POA should contact them by Friday if she had not heard from them. The RN also told the POA the transfer letter/agreement (4-4-05) was given to the tenant upon return from the hospital and the tenant verbalized understanding. The RN told the POA the program would continue to monitor for a full two weeks but that the tenant had already been noncompliant with flushing the toilet, not wearing depends properly and not toileting every two hours. According to the nurse's note the POA questioned if May 15th was still the date to move the tenant and the RN stated yes, May 15th is the last day. The POA verbalized understanding and was pleasant with the RN.

On 4-14-05 the Administrator contacted the POA to ask if the POA wanted the program to give the transfer letter to the tenant or if the POA thought it might upset the tenant. The POA responded by saying there were again two stories and that the RN had said yesterday (4-13-05) that the program would monitor until 4-22-05 and would then make a decision. The Administrator indicated the letter dated 4-4-05 stated the tenant would need to be 100% compliant with the goals or there would be a May 15th transfer. According to a written statement by the Administrator, the POA stated she would make sure everyone knew that the program did not know how to take care of the elderly if the program was going to expect those kinds of things. The POA acknowledged signing the agreement and agreed to the items listed but stated the program had decided a long time ago that they wanted the tenant out. The POA then said the tenant could be given the letter but to be gentle unlike what the program had done in the past, according to the written statement by the Administrator. On 4-14-05 prior to the call with the POA, a representative from the nursing facility called and told the Administrator that the facility had accepted the tenant and were looking at a move date of 4-29-05. According to the written statement by the Administrator, the Administrator had not received any information from the family that the tenant would be moving.

On 4-14-05 the tenant was given a letter signed by the Administrator that stated the program had documentation that the tenant was not being 100% compliant with the 4-4-05 letter/agreement and the program was looking at a transfer date of 5-15-05. The letter also offered assistance with the transfer.

- Regulatory Insufficiency: None noted.

C. Service Plan – Program has an individualized service plan developed and updated for each tenant as required. [321 IAC 25.28]

Complaint Allegation: It was alleged the service plan was not updated to reflect changes in the tenant.

- Monitoring Observation: Tenant #1 had a service plan dated 2-15-05. The service plan identified the tenant's need for toileting assistance, which stated assist with pericare four times per day and change depends each time. The service plan identified the tenant as a potential risk for skin breakdown due to urinary incontinence. The service plan also identified laundry and housekeeping assistance related to the urinary incontinence. Laundry, one to two loads a week or upon request, garbage assist five times a week and wash bathroom and kitchen floor one extra time each week. The service plan also stated staff would remove clothes at bedtime and lay out clean clothes for the tenant. The service plan identified several areas that were program interventions to manage the tenant's incontinence. These areas included: toileting assistance, laundry, housekeeping and grooming assistance. The tenant, RN, administrator and another program team member, signed the service plan. The service plan was updated and signed on 2-15-05.

- Regulatory Insufficiency: None noted.

D. Assisted Living Definition – Program encourages family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. [Iowa Code section 231C.2]

Complaint Allegation: It was alleged tenant rights were not upheld during this process and family was not notified of changes that occurred with the tenant.

- Monitoring Observation: According to program records the tenant was given a transfer risk agreement in August of 2004 in regard to the tenant's incontinence. This agreement was implemented because the tenant was refusing pericare and refusing to change clothes. This agreement set forth four goals, which included: change clothing daily, remain free of any urine odor, accept assistance from staff with pericare and change depends four times per day. The statement stated the goals had to be achieved by 8-23-04 and if they were not achieved the tenant would be transferred by 9-21-04. The agreement was signed by the tenant and the RN on 8-16-04 and signed by the former Administrator on 8-19-04. According to a family interview and administrative staff interviews the tenant's family was notified of the transfer risk agreement.

  According to the administrative staff interviews the tenant was compliant with this agreement and the odor problem was less apparent and less frequent from August 2004 until late December/early January of 2005. The service plan identified several areas that were program interventions to manage the tenant's incontinence. These areas included: toileting assistance, laundry, housekeeping and grooming assistance.

  According to the RN, despite the interventions, odor due to urinary incontinence had become apparent and frequent in January of 2005. The RN obtained incontinence

Emerson Point
Affordable Assisted Living

May 5, 2005

Chris Nothaft
Certification Coordinator – Eastern Iowa
Adult Services Bureau
Iowa Department of Inspections and Appeals
321 East 12th Street
Des Moines, IA 50319-0083

RE: Complaint Investigation Report #12171
Plan of Correction & Request for Reconsideration

Dear Ms. Nothaft:

The following is being offered as a Plan of Correction (POC) for the regulatory insufficiency noted in your April 22, 2005 letter and Complaint Investigation Report.

The Complaint Investigation Report noted, "The program evaluates each tenant's functional and cognitive abilities and health status and the determination of needed services as required. [321 IAC 25.23(1) and/or (2)]"

The Regulatory Insufficiency cited was, "The program did not complete an appropriate evaluation including evaluating tenant's functional and cognitive abilities and health status as needed."

It is our assumption that the regulatory insufficiency cited is focusing on 321 IAC 25.23 (2) and not 25.23(1) since a comprehensive assessment was provided to the tenant prior to her signing occupancy documents, as is required in 321 IAC 25.23(1). If this is incorrect or if you need documentation evidencing the comprehensive assessment prior to occupancy, please let us know.

The Monitoring Observation noted, "The RN went to the hospital on 4-7-05 to assess the tenant prior to the tenant's return to the program. The RN spoke with the tenant and the discharge planner and reviewed physician notes, medications, ambulation status, toileting ability and transfer needs. The tenant reportedly recognized the RN and the RN did not see any decline cognitively. Upon the tenant's return to the program on 4-8-05 the RN completed functional, cognitive and health assessments."

The tenant referred to above was hospitalized after the initiation of the transfer from Emerson Point. A plan, agreed to by the tenant's legal representative, was in place 4-4-05 that outlined

goals for the tenant to achieve and the program's plan for assistance until transfer was finalized, which was to be no later than May 15, 2005.

When the RN visited the tenant in the hospital it was to evaluate her needs and the programs ability to meet those needs. This evaluation, through review of the patient chart, discussion with the discharge planning nurse and with the tenant, was conducted with full knowledge of the already existing plan for transfer from Emerson Point. The family had already begun discussion with the discharge planning nurse at the hospital regarding placement in a nursing facility. However, the legal representative for the tenant expressed a preference to move the tenant back to Emerson Point first and then transfer to the nursing home. The legal representative felt this would provide for a smoother transition for the tenant.

After the RN's evaluation and subsequent determination that the program could continue to meet the tenant's needs until at least the previously agreed upon transfer date, the tenant was readmitted to services at Emerson Point on April 8, 2005. The RN then completed a full and comprehensive assessment of the tenant including functional, cognitive and health status. This assessment was completed in order to determine any modifications to the tenant's individualized service plans, in accordance with 321 IAC 25.23(2).

It is our policy to provide a comprehensive assessment to all tenants no later than the day they return from a hospitalization. This was our previous interpretation of at least one situation implied by the term "as needed" in 321 IAC 25.23 (2). When our RN visits a tenant in the hospital prior to discharge it is to determine if, based on the RN's knowledge an experience with our transfer criteria, the tenant exceeds our transfer criteria. A full assessment and subsequent revisions to a tenant's individualized service plan has been done the day they return from the hospital as we feel that the most accurate cognitive, health and functional status information is obtained when the tenant is in their own home environment.

It was not our previous understanding that all tenants must receive a written assessment of their cognitive, health and functional status while still in the hospital. The regulation 321 IAC 25.23(2) is titled "Evaluation within 30 days of occupancy" and indicates additional evaluations "as needed, but not less than annually." We felt that the visit by our RN to the tenant while in the hospital coupled with the comprehensive assessment upon the tenant's return was sufficient.

However, given the April 22, 2005 notice of a regulatory insufficiency we propose the following plan of correction:

A written evaluation of the tenant's functional, cognitive and health status will be conducted prior to a tenant's return to Emerson Point from a hospitalization of more than 24 hours. Additionally, at the time of notification of a tenant's hospitalization, the RN will contact the appropriate discharge planner and send a transfer summary to the hospital.

We respectfully request reconsideration of this regulatory insufficiency. We will implement the above plan of correction if so required, but it will create some financial difficulties for us. The comprehensive assessment that is provided to the tenant when they return to Emerson Point is required for a resumption of care. Additionally, the now required additional evaluation to occur while in the hospital will not be reimbursable. It seems to us to be a duplication of efforts to provide a written evaluation of the tenant the day before discharge and the day after discharge. CMS would also perceive this as a duplication of services. We also feel strongly that the most appropriate revisions to the individualized service plan come form the in-home evaluation.

We appreciate your assistance in helping us do the best job we can in meeting the needs of our low income tenants. If you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,

Alaina J. Welsh

Alaina J. Welsh
Project Planner and former Administrator
Representing the Owner, Emerson Point Limited Partnership
Burns & Burns, L.C., General Partner